

§ 908.1 Board orders.

If the Board finds that a grievance is meritorious, the Board shall have the authority to direct the Agency:

(a) To correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(b) To reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(c) To retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(d) To reinstate the grievant, and to grant the grievant back pay, where it is established that the separation or suspension without pay of the employee was unjustified or unwarranted under the Back Pay Act (5 U.S.C. 5596(b)(1));

(e) To take any corrective action deemed appropriate by the Board provided it is not contrary to law or collective bargaining agreement.

[50 FR 31357, Aug. 2, 1985, as amended at 56 FR 55459, Oct. 28, 1991]

§ 908.2 Attorney fees.

(a) If the Board finds that a grievance is meritorious or that an Agency has not established the cause for separation of a charged employee in a hearing before the Board pursuant to section 610 of the Act, the Board shall have the authority to direct the Agency to pay reasonable attorney fees to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under 5 U.S.C. 7701(g).

(b) Requests for attorney fees, accompanied by supporting documentation, must be filed with the Board within thirty (30) days of the date of the Board's decision.

[56 FR 55459, Oct. 28, 1991]

§ 908.3 Board recommendations.

(a) If the Board finds that the grievance is meritorious and that remedial

action should be taken that relates directly to promotion, tenure, or assignment of the Grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence in a grievance proceeding warrants disciplinary action against any employee of an Agency, it shall make an appropriate recommendation to the head of the concerned Agency.

(b) The head of the Agency shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation and shall implement the recommendation of the Board except to the extent that the head of the Agency rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the head of the Agency rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Copies of the decision shall be served on the other parties. Pending the decision of the head of the Agency, there shall be no ex parte communication concerning the grievance between the head of the Agency and any person involved in the proceedings of the Board. The head of the Agency shall, however, have access to the entire Record of the Proceedings of the Board.

(c) A recommendation under this section shall, for the purposes of section 1110 of the Act, be considered a final action upon the expiration of a 30-day period referred to in paragraph (b) of this section, except to the extent that it is rejected by the head of the Agency by an appropriate written decision.

(d)(1) If the head of the Agency makes a written decision under paragraph (b) of this section rejecting a recommendation in whole or in part on the basis of a determination that implementing such recommendation would be contrary to law, the head of the Agency shall, within the 30-day period referred to in paragraph (b) of this section:

(i) Submit a copy of such decision to the Board; and

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(ii) Request that the Board reconsider its recommendation or, if less than the entirety is rejected, that the Board reconsider the portion rejected.

(2) Within 30 days after receiving such a request, the Board shall, after reviewing the head of the Agency's decision, make a recommendation to the head of the agency confirming, modifying, or vacating its original recommendation or, if less than the entirety was rejected, the portion involved. Reconsideration shall be limited to the question of whether implementing the Board's original recommendation, either in whole or in part, as applicable, would be contrary to law.

(e) A Board recommendation made under the preceding paragraph (d)(2) of this section shall be considered a final action for the purpose of section 1110 of the Act, and shall be implemented by the head of the Agency.

(f) The provisions of paragraphs (c), (d), and (e) of this section shall not apply with respect to any grievance in which the Board has issued a final decision pursuant to section 1107 of the Act before December 22, 1987.

[50 FR 31357, Aug. 2, 1985. Redesignated and amended at 56 FR 55459, Oct. 28, 1991]

PART 909—DECISIONMAKING

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AUTHORITY: Secs. 1106 and 1107, Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136 and 4137).

SOURCE: 50 FR 31358, Aug. 2, 1985, unless otherwise noted.

§ 909.1 Basis.

Decisions of the Board shall be based upon the record of proceedings, shall be in writing, shall include findings of fact, and shall include a statement of the reasons for the decision.

§ 909.2 Board order.

Where the Board's decision imposes action on an Agency the decision shall be in the form of a remedial order ad-

dressed to the designated official of the Agency. A copy of the decision shall be supplied to each party.

§ 909.3 Board recommendation.

Where the Board's decision is a recommendation, it shall be directed to the head of the Agency. A copy of the decision shall be supplied to each party.

§ 909.4 Other decision.

Where the Board's decision requires no action by an Agency, the decision shall be forwarded to the grievant. A copy of the decision shall be supplied to each party.

§ 909.5 Time limits for compliance.

Orders of the Board and recommendations which are not rejected in accordance with § 908.2 of this chapter shall be complied with within any time limits for compliance established by the Board's decision, unless the Board extends the time limit on a showing of good cause.

§ 909.6 Summaries of Board decisions.

The Board may, from time to time, issue such summaries and expurgated versions of its decisions as it may consider necessary to permit the Agencies, the exclusive representative organization(s), and the members of the Service to become aware of the general nature of the cases it has received and their manner of disposition, without invading the privacy of the grievants.

PART 910—MISCELLANEOUS

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910.5 Judicial review.

910.6 Pending grievances.

AUTHORITY: Secs. 1106, 1107, 1110, and 2401 of the Foreign Service Act of 1980, Pub. L. 96-465 (22 U.S.C. 4136, 4137, 4140, and 4172).

§ 910.1 Requests to reopen cases.

The Board may reconsider any decision upon the presentation of newly